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ENTERPRISES, INC.

17
18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA
20 WESTERN DIVISION
21

22 CATHERINE A. ZULFER,

23 Plaintiff,

24 v.

25 PLAYBOY ENTERPRISES, INC. and
DOES 1 through 10, inclusive,

26 Defendant.
27
28

Case No. CV12-08263-BRO (SHx)

**STIPULATION RE PROTECTIVE
ORDER AND ORDER**

Trial Date: November 5, 2013

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve
3 production of confidential, proprietary, or private information for which special
4 protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation may be warranted. Accordingly, the parties hereby
6 stipulate to and petition the court to enter the following Stipulated Protective Order.
7 The parties acknowledge that this Order does not confer blanket protections on all
8 disclosures or responses to discovery and that the protection it affords from public
9 disclosure and use extends only to the limited information or items that are entitled
10 to confidential treatment under the applicable legal principles. The parties further
11 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
12 Order does not entitle them to file confidential information under seal; Local Rule
13 79-5.1 sets forth the procedures that must be followed and the standards that will be
14 applied when a party seeks permission from the court to file material under seal.

15 2. DEFINITIONS

16 2.1 Challenging Party: a Party or Non-Party that challenges the
17 designation of information or items under this Order.

18 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
19 how it is generated, stored or maintained) or tangible things that qualify for
20 protection under Federal Rule of Civil Procedure 26(c). For purposes of this
21 Protective Order, “CONFIDENTIAL” information shall include all non-public
22 information or matter related to trade secrets, confidential information, knowledge,
23 or data of a Party, or any of its clients, customers, consultants, licensees, licensors,
24 vendors or affiliates, including but not limited to: business plans, records, and
25 affairs; marketing plans; promotional materials and information; financial matters;
26 selective personnel matters; procedures; finances; operation costs; business plans;
27 personnel records; personal information subject to protection under California law;
28 or other commercially or personally sensitive or proprietary information.

1 2.3 Counsel (without qualifier): Outside Counsel of Record and House
2 Counsel (as well as their support staff).

3 2.4 Designating Party: a Party or Non-Party that designates information or
4 items that it produces in disclosures or in responses to discovery as
5 “CONFIDENTIAL.”

6 2.5 Disclosure or Discovery Material: all items or information, regardless
7 of the medium or manner in which it is generated, stored, or maintained (including,
8 among other things, testimony, transcripts, and tangible things), that are produced or
9 generated in disclosures or responses to discovery in this matter.

10 2.6 Expert: a person with specialized knowledge or experience in a matter
11 pertinent to the litigation who has been retained by a Party or its counsel to serve as
12 an expert witness or as a consultant in this action.

13 2.7 House Counsel: attorneys who are employees of a party to this action.
14 House Counsel does not include Outside Counsel of Record or any other outside
15 counsel.

16 2.8 Non-Party: any natural person, partnership, corporation, association, or
17 other legal entity not named as a Party to this action.

18 2.9 Outside Counsel of Record: attorneys who are not employees of a
19 party to this action but are retained to represent or advise a party to this action and
20 have appeared in this action on behalf of that party or are affiliated with a law firm
21 which has appeared on behalf of that party.

22 2.10 Party: any party to this action, including all of its officers, directors,
23 employees, consultants, retained experts, and Outside Counsel of Record (and their
24 support staffs).

25 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
26 Discovery Material in this action.

27 2.12 Professional Vendors: persons or entities that provide litigation
28 support services (e.g., photocopying, videotaping, translating, preparing exhibits or

1 demonstrations, and organizing, storing, or retrieving data in any form or medium)
2 and their employees and subcontractors.

3 2.13 Protected Material: any Disclosure or Discovery Material that is
4 designated as "CONFIDENTIAL."

5 2.14 Receiving Party: a Party that receives Disclosure or Discovery
6 Material from a Producing Party.

7 3. SCOPE

8 The protections conferred by this Stipulation and Order cover not only
9 Protected Material (as defined above), but also (1) any information copied or
10 extracted from Protected Material; (2) all copies, excerpts, summaries, or
11 compilations of Protected Material; and (3) any testimony, conversations, or
12 presentations by Parties or their Counsel that might reveal Protected Material.
13 However, the protections conferred by this Stipulation and Order do not cover the
14 following information: (a) any information that is in the public domain at the time
15 of disclosure to a Receiving Party or becomes part of the public domain after its
16 disclosure to a Receiving Party as a result of publication not involving a violation of
17 this Order, including becoming part of the public record through trial or otherwise;
18 and (b) any information known to the Receiving Party prior to the disclosure or
19 obtained by the Receiving Party after the disclosure from a source who obtained the
20 information lawfully and under no obligation of confidentiality to the Designating
21 Party. Any use of Protected Material at trial shall be governed by a separate
22 agreement or order.

23 4. DURATION

24 Even after final disposition of this litigation, the confidentiality obligations
25 imposed by this Order shall remain in effect until a Designating Party agrees
26 otherwise in writing or a court order otherwise directs. Final disposition shall be
27 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
28 or without prejudice; and (2) final judgment herein after the completion and

1 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
2 including the time limits for filing any motions or applications for extension of time
3 pursuant to applicable law.

4 5. DESIGNATING PROTECTED MATERIAL

5 5.1 Exercise of Restraint and Care in Designating Material for Protection.

6 Each Party or Non-Party that designates information or items for protection under
7 this Order must take care to limit any such designation to specific material that
8 qualifies under the appropriate standards. The Designating Party must designate for
9 protection only those parts of material, documents, items, or oral or written
10 communications that qualify – so that other portions of the material, documents,
11 items, or communications for which protection is not warranted are not swept
12 unjustifiably within the ambit of this Order.

13 Mass, indiscriminate, or routinized designations are prohibited. Designations
14 that are shown to be clearly unjustified or that have been made for an improper
15 purpose (e.g., to unnecessarily encumber or retard the case development process or
16 to impose unnecessary expenses and burdens on other parties) expose the
17 Designating Party to sanctions.

18 If it comes to a Designating Party's attention that information or items that it
19 designated for protection do not qualify for protection, that Designating Party must
20 promptly notify all other Parties that it is withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in
22 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
23 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
24 under this Order must be clearly so designated before the material is disclosed or
25 produced.

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (e.g., paper or electronic
28 documents, but excluding transcripts of depositions or other pretrial or trial

proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

A Party or Non-Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in deposition or in other pretrial proceedings, that the Designating Party identify on the record, within 14 days of the close of the deposition, hearing, or other proceeding, all protected testimony.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material.

1 Upon timely correction of a designation, the Receiving Party must make reasonable
2 efforts to assure that the material is treated in accordance with the provisions of this
3 Order.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
6 designation of confidentiality at any time. Unless a prompt challenge to a
7 Designating Party's confidentiality designation is necessary to avoid foreseeable,
8 substantial unfairness, unnecessary economic burdens, or a significant disruption or
9 delay of the litigation, a Party does not waive its right to challenge a confidentiality
10 designation by electing not to mount a challenge promptly after the original
11 designation is disclosed.

12 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
13 resolution process by providing written notice of each designation it is challenging
14 and describing the basis for each challenge. In compliance with Local Rule 37-1, the
15 parties shall attempt to resolve each challenge in good faith and must begin the
16 process by conferring directly (in voice to voice dialogue; other forms of
17 communication are not sufficient) within 10 days of the date of service of notice. In
18 conferring, the Challenging Party must explain the basis for its belief that the
19 confidentiality designation was not proper and must give the Designating Party an
20 opportunity to review the designated material, to reconsider the circumstances, and,
21 if no change in designation is offered, to explain the basis for the chosen
22 designation. A Challenging Party may proceed to the next stage of the challenge
23 process only if it has engaged in this meet and confer process first or establishes that
24 the Designating Party is unwilling to participate in the meet and confer process in a
25 timely manner.

26 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
27 court intervention, they shall formulate a written stipulation. The stipulation shall be
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1 filed and served with the notice of motion and shall conform to all of the
2 requirements of Local Rule 37-2.

3 The burden of persuasion in any such challenge proceeding shall be on the
4 Designating Party. Frivolous challenges, and those made for an improper purpose
5 (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may
6 expose the Challenging Party to sanctions. Unless the Designating Party has waived
7 the confidentiality designation by failing to file a motion to retain confidentiality as
8 described above, all parties shall continue to afford the material in question the level
9 of protection to which it is entitled under the Producing Party's designation until the
10 court rules on the challenge.

11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is
13 disclosed or produced by another Party or by a Non-Party in connection with this
14 case only for prosecuting, defending, or attempting to settle this litigation. Such
15 Protected Material may be disclosed only to the categories of persons and under the
16 conditions described in this Order. When the litigation has been terminated, a
17 Receiving Party must comply with the provisions of section 13 below (FINAL
18 DISPOSITION).

19 Protected Material must be stored and maintained by a Receiving Party at a
20 location and in a secure manner that ensures that access is limited to the persons
21 authorized under this Order.

22 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
23 otherwise ordered by the court or permitted in writing by the Designating Party, a
24 Receiving Party may disclose any information or item designated
25 "CONFIDENTIAL" only to:

26 (a) the Receiving Party's Outside Counsel of Record in this action,
27 as well as employees of said Outside Counsel of Record to whom it is reasonably
28 necessary to disclose the information for this litigation and who have signed the

1 “Acknowledgment and Agreement to Be Bound” that is attached hereto as
2 Exhibit A;

3 (b) Experts (as defined in this Order) of the Receiving Party to
4 whom disclosure is reasonably necessary for this litigation and who have signed the
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (c) the court and its personnel;

7 (d) court reporters and their staff, professional jury or trial
8 consultants, mock jurors, and Professional Vendors to whom disclosure is
9 reasonably necessary for this litigation and who have signed the “Acknowledgment
10 and Agreement to Be Bound” (Exhibit A);

11 (e) during their depositions, witnesses in the action to whom
12 disclosure is reasonably necessary and who have signed the “Acknowledgment and
13 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating
14 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits
15 to depositions that reveal Protected Material must be separately bound by the court
16 reporter and may not be disclosed to anyone except as permitted under this
17 Stipulated Protective Order;

18 (f) the Court and court personnel are expressly excluded from the
19 requirement to sign the “Acknowledgment and Agreement to Be Bound”
20 (Exhibit A); and

21 (g) individuals whom counsel reasonably believe may be percipient
22 witnesses or individuals reasonably believed to be individuals with knowledge of
23 facts or circumstances believed to be relevant to the issues in the case, provided that
24 such individuals first sign the “Acknowledgement and Agreement to Be Bound
25 (Exhibit A), that the signed “Acknowledgement and Agreement to Be Bound” is
26 maintained by counsel, and that the individual is not permitted to keep or retain any
27 copies of any “CONFIDENTIAL” documents or information derived from the
28 “CONFIDENTIAL” documents.

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
 2 IN OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation
 4 that compels disclosure of any information or items designated in this action as
 5 “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such
 7 notification shall include a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or
 9 order to issue in the other litigation that some or all of the material covered by the
 10 subpoena or order is subject to this Protective Order. Such notification shall include
 11 a copy of this Stipulated Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be
 13 pursued by the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with
 15 the subpoena or court order shall not produce any information designated in this
 16 action as “CONFIDENTIAL” before a determination by the court from which the
 17 subpoena or order issued, unless the Party has obtained the Designating Party’s
 18 permission. The Designating Party shall bear the burden and expense of seeking
 19 protection in that court of its confidential material – and nothing in these provisions
 20 should be construed as authorizing or encouraging a Receiving Party in this action
 21 to disobey a lawful directive or subpoena from another court.

22 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
 23 PRODUCED IN THIS LITIGATION

24 (a) The terms of this Order are applicable to information produced
 25 by a Non-Party in this action and designated as “CONFIDENTIAL.” Such
 26 information produced by Non-Parties in connection with this litigation is protected
 27 by the remedies and relief provided by this Order. Nothing in these provisions
 28 should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court.¹ Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts

¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
2 persons to whom unauthorized disclosures were made of all the terms of this Order,
3 and (d) request such person or persons to execute the “Acknowledgment and
4 Agreement to Be Bound” that is attached hereto as Exhibit A.

5 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
6 **PROTECTED MATERIAL**

7 When a Producing Party gives notice to Receiving Parties that certain
8 inadvertently produced material is subject to a claim of privilege or other protection,
9 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
10 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
11 may be established in an e-discovery order that provides for production without
12 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar
13 as the parties reach an agreement on the effect of disclosure of a communication or
14 information covered by the attorney-client privilege or work product protection, the
15 parties may incorporate their agreement in the stipulated protective order submitted
16 to the court.

17 **12. MISCELLANEOUS**

18 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
19 person to seek its modification by the court in the future.

20 12.2 Right to Assert Other Objections. By stipulating to the entry of this
21 Protective Order no Party waives any right it otherwise would have to object to
22 disclosing or producing any information or item on any ground not addressed in this
23 Stipulated Protective Order. Similarly, no Party waives any right to object on any
24 ground to use in evidence of any of the material covered by this Protective Order.

25 12.3 Filing Protected Material. When filing any papers with the Court that
26 contain Protected Material, or documents designated Confidential, in accordance
27 with Local Rule 79-5.1, the proposed filing shall be accompanied by an application
28 to file the papers or the portion thereof containing the protected information (if such

1 portion is segregable) under seal; and that the application shall be directed to the
2 judge to whom the papers are directed.

3 13. FINAL DISPOSITION

4 Within 60 days after the final disposition of this action, as defined in
5 paragraph 4, each Receiving Party must return all Protected Material to the
6 Producing Party or destroy such material or otherwise maintain all such materials
7 consistent with the firm's document management and retention policy but subject to
8 the requirements of this protective order. As used in this subdivision, "all Protected
9 Material" includes all copies, abstracts, compilations, summaries, and any other
10 format reproducing or capturing any of the Protected Material. Whether the
11 Protected Material is returned or destroyed or otherwise maintained, and upon
12 written request, the Receiving Party must submit a written certification to the
13 Producing Party (and, if not the same person or entity, to the Designating Party) by
14 the 60 day deadline that (1) identifies (by category, where appropriate) all the
15 Protected Material that was returned or destroyed or otherwise maintained consistent
16 with the firm's document management and retention policy but subject to the
17 requirements of this protective order and (2) affirms that the Receiving Party has not
18 retained any copies, abstracts, compilations, summaries or any other format
19 reproducing or capturing any of the Protected Material other than as provided
20 herein. Notwithstanding this provision, Counsel are entitled to retain an archival
21 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
22 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
23 work product, and consultant and expert work product, even if such materials
24 contain Protected Material. Any such archival copies that contain or constitute
25 Protected Material remain subject to this Protective Order as set forth in Section 4
26 (DURATION).

27 This Stipulation shall, subject to Court approval, be binding upon the Parties
28 upon their signature hereto, and by signing hereto each Party agrees to comply with

1 the terms of this Stipulation and to be bound thereby. In the event that the Court
2 does not enter into the Proposed Protective Order based upon this Stipulation, the
3 Parties shall in good faith negotiate any terms that the Court finds objectionable.

4 This Order is entered solely for the purpose of facilitating the exchange of
5 documents and information between the Parties to this action without involving the
6 Court unnecessarily in the process. Nothing in this Order nor the production of any
7 information or document under the terms of this Order nor any proceedings pursuant
8 to this Order shall be deemed to have the effect of an admission or waiver by any
9 Party or of altering the confidentiality or non-confidentiality of any such document
10 or information or altering any existing obligation of any Party or the absence
11 thereof.

12 Without separate Court order, this Proposed Protective Order and the Parties'
13 stipulation do not change, amend or circumvent any court rule or local rule.

14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

15
16 Dated: May 24, 2013 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

17
18 Bv /s/ Morgan P. Forsey
19 JENNIFER G. REDMOND
20 JOHN P. STIGI III
21 MORGAN P. FORSEY
22 KATHRYN A. VISOSKY

23
24 Attorneys for Defendant
25 PLAYBOY ENTERPRISES, INC.

26
27 Dated: May 24, 2013 THE DERUBERTIS LAW FIRM, APC

28 Bv /s/ David M. deRubertis
DAVID M. DERUBERTIS

Attorneys for Plaintiff
CATHERINE A. ZULFER

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1 PURSUANT TO THE PARTIES' STIPULATION,
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3 IT IS SO ORDERED.
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5 DATED: May 28, 2013



7 STEPHEN J. HILLMAN
8 UNITED STATES MAGISTRATE JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Central District of California
on [INSERT DATE] in the case of *Catherine Zulfer v. Playboy Enterprises, Inc.*
I agree to comply with and to be bound by all the terms of this Stipulated Protective
Order and I understand and acknowledge that failure to so comply may expose me
to sanctions and punishment in the nature of contempt.

I solemnly promise that I will not disclose in any manner any information or
item that is subject to this Stipulated Protective Order to any person or entity except
in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____ City and State where signed: _____

Printed name: _____

Signature: _____